

substances of the original sample obtained such that a measure of the toxicity of any combination of potentially cytotoxic substances can be obtained; and

E (c) monitoring the growth rate of the particle-feeding flagellate culture in the presence of the aliquot of the liquid whole effluent sample, wherein a decrease in growth rate of the culture in the presence of the liquid whole effluent sample is indicative of the presence of cytotoxic agents in the liquid whole effluent sample.

REMARKS

This is in response to the Decision on Appeal mailed October 29, 2002.

Applicants enclose herewith a petition to revive an unintentionally abandoned application, since Applicant's attorney inadvertantly missed the due date of December 30, 2002. Reconsideration of the application, and allowance in view of the remarks herein are respectfully requested.

In the Decision on Appeal, the Board expressed concern about the definition of whole effluent sample both within the claims, and as it was being applied by the examiner. To facilitate clarification on this issue, claim 1 has been amended to specify that the aliquot of the whole effluent sample which is added to the growing culture of flagellates contains "all of the potentially cytotoxic substances of the original sample obtained such that a measure of the toxicity of any combination of potentially cytotoxic substances can be obtained." This language is consistent with the art-recognized definition of whole effluent tests (WET tests) described in previously submitted papers, as well as with the specification on Page 4, line 4 et seq.

With regard to the previous art rejection, Applicants submit that none of the examples of the prior Jaffe patent meet the limitations of this claim.

In the Office Action, the Examiner for the first time explained the basis for his assertion that the '508 patent discloses a WET test. Specifically, he argues that the collection of fumes in Example 5 is a whole effluent test is a WET test because no concentration or dilution is recited. Applicants point out that this sample is not a liquid sample, and that the capture of the gaseous sample will necessarily separate water soluble from less soluble materials. Thus, such capture would not realistically capture all potentially toxic components in the air equally and thus